

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1903.

195

No. 1267.

No. 11, SPECIAL CALENDAR.

EDWARD W. ANDERSON AND ORLAN CLYDE CULLEN,
APPELLANTS.

VS.

BAXTER MORTON

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 18, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1903.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

EDWARD W. ANDERSON ET AL., Appellants, }
vs. } No. 1267.
BAXTER MORTON. }

a Supreme Court of the District of Columbia.

BAXTER MORTON, Plaintiff, }
vs. } No. 45572. At Law.
EDWARD W. ANDERSON and ORLAN CLYDE }
Cullen, Defendants. }

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Directions to Clerk for Preparation of Record.*

Filed November 22, 1902.

In the Supreme Court of the District of Columbia.

BAXTER MORTON, Plaintiff, }
vs. } At Law. No. 45572.
EDWARD W. ANDERSON and ORLAN CLYDE }
Cullen, Defendants. }

John R. Young, Esq., clerk of the supreme court of the District of Columbia.

SIR: You are hereby directed to transcribe and certify only that part of the record in the above-entitled cause on appeal to the Court of Appeals of the District of Columbia, which relates to the proceedings in the supreme court of the District of Columbia, to wit:

Petition for writ of certiorari, with affidavit attached thereto.

Order granting same.

Motion to quash

Order to quash and granting appeal.

Very respectfully,

WEST STEEVER,
Attorney for Defendants.

Petition for Writ of Certiorari.

Filed August 9, 1902.

In the Supreme Court of the District of Columbia, the — Day of
August, 1902.

BAXTER MORTON, Plaintiff,	}	At Law. No. 45572.
vs.		
EDWARD W. ANDERSON and ORLAN CLYDE Cullen, Defendants.		

To the Honorable Harry M. Clabaugh, justice of the supreme court
of the District of Columbia:

The petition of Edward W. Anderson and Orlan Clyde Cullen,
defendants in the above-entitled action at law, respectfully sheweth:

1. That an action has been brought by Baxter Morton against
your petitioners before Robert H. Terrell, justice of the peace of the
District of Columbia, subdistrict number eight, in which he claims
the sum of two hundred and fifty dollars (\$250.00) with interest
from the 6th day of July, 1900, as jointly due to him by your said
petitioners.

2. That plea to the jurisdiction of the court was filed, on the
ground that the action was improperly brought in subdistrict
number eight, and said plea was overruled by the said Robert H.
Terrell, justice of the peace, and judgment was entered, as for the
plaintiff.

3. That said tribunal, in proceeding to enter such judgment, was
without jurisdiction in the case.

3 4. That the said Robert H. Terrell was illegally appointed
to the office of justice of the peace.

5. That even if the said Robert H. Terrell was legally appointed,
he exceeded his authority in pronouncing judgment in such action,
as beyond the jurisdiction of said court.

Wherefore, your petitioners pray that the writ of certiorari be
issued to this honorable court to the said Robert H. Terrell, justice
of the peace, requiring him to certify to this honorable court, the
record and all things touching the same of the action brought therein
by Baxter Morton, plaintiff *versus* Edward W. Anderson and Orlan
Clyde Cullen, defendants, in order that this honorable court may
proceed by taking cognizance thereof, as in due course of law.

And your petitioner- will ever pray, etc.

EDWARD W. ANDERSON.
ORLAN CLYDE CULLEN.

WEST STEEVER,
Attorney for Petitioner-.

Affidavit.

Filed August 9, 1902.

CITY OF WASHINGTON, }
 District of Columbia, } ss :

4 We, Edward W. Anderson and Orlan Clyde Cullen, do solemnly swear that we are the defendants in an action brought by Baxter Morton, plaintiff, before Robert H. Terrell, justice of the peace, of the District of Columbia, subdistrict number eight, claiming the sum of two hundred and fifty dollars (\$250.00), with interest from July 6, 1900; to which was filed a plea to the jurisdiction of said court, on the ground that said action was improperly brought in said subdistrict number eight, as Edward W. Anderson resides at No. 1435 Chapin street northwest, in the city of Washington, District of Columbia, and Orlan Clyde Cullen resides at No. 201 East Capitol street, southeast, in the city of Washington, District of Columbia, and that such plea was overruled by the said Robert H. Terrell, justice of the peace, and judgment was rendered as for the plaintiff, and further, affiants are informed and verily believe that the said Robert H. Terrell was illegally appointed to the office of justice of peace by the President of the United States before the organic law creating such office, went into effect, and even if legally appointed, the said judgment was without, and beyond the jurisdiction of said court, and that the petition herewith attached for the writ of certiorari to be issued requiring the said Robert H. Terrell, justice of the peace, to certify the record and all things touching the same, of the said action of Baxter Morton, plaintiff, against your affiants as aforesaid, to the supreme court of the District of Columbia was not interposed for delay, and that we are informed by counsel that we have a good and valid defence to said action.

EDWARD W. ANDERSON.
 ORLAN CLYDE CULLEN.

5 DISTRICT OF COLUMBIA, }
 County of Washington. }

Personally before me appeared Edward W. Anderson, and Orlan Clyde Cullen, and signed and made oath to the above statement.

[SEAL.] N. CURTIS LAMMOND,
Notary Public.

Endorsed.

Let the writ of certiorari be issued as prayed for in the within petition.

HARRY M. CLABAUGH, *Justice.*

Motion to Quash Writ of Certiorari.

Filed August 15, 1902.

In the Supreme Court of the District of Columbia.

BAXTER MORTON	}	At Law. No. 45572.
vs.		
EDWARD W. ANDERSON and OELAN CLYDE		
Cullen.		

6 Now comes Baxter Morton, by his attorneys and moves the court, that the writ of certiorari issued to Robert H. Terrell, justice of the peace, in the above-entitled cause, be quashed on the application for said writ and the return of the justice to same.

JAS. S. McDONOGH,
HARRY A. HEGARTY,
Att'ys for Def't Morton.

West Steever, att'y for pl't'ffs :

Please take notice that we will call up the above motion in the supreme court of the District of Columbia, on the second Friday, in October, or as soon thereafter as counsel can be heard.

JAS. S. McDONOGH,
HARRY A. HEGARTY,
Att'ys for Def't Morton.

Supreme Court of the District of Columbia.

FRIDAY, October 17, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham, presiding.

* * * * *

The following case was certified to Justice Barnard, who presided at the trial.

7	BAXTER MORTON, Plaintiff,	}	At Law. No. 45572.
	vs.		
	EDWARD W. ANDERSON and ORLAN CLYDE		
	Cullen.		

This cause coming on to be heard upon the motion of the plaintiff to quash the writ of certiorari issued herein, and the same having been heard, it is considered that said writ of certiorari be, and hereby is, quashed and for nothing held at the costs of the defendants; and the court orders the papers returned to the justice of the peace whence they came, to proceed thereon according to law.

The defendants note an appeal to the Court of Appeals, and the court fixes the penalty of the bond to operate as a supersedeas in the sum of five hundred dollars.

8

Order for Record.

Filed November 29, 1902.

In the Supreme Court of the District of Columbia, the 24th Day of
November, 1902.

BAXTER MORTON	}	At Law. No. 45572.
<i>vs.</i>		
EDWARD W. ANDERSON & ORLAN CLYDE		
Cullen.		

The clerk of said court will please include in the transcript of record, in addition to the papers designated by the appellant, transcript of proceedings, return of Justice Terrell filed in the above cause, Aug. 16th, in answer to the writ of certiorari issued in said cause, and also the plea of E. W. Anderson attached thereto and filed with said transcript of proceedings.

JAS. S. McDONOGH AND
HARRY A. HEGARTY,
Att'ys for Appellee.

9

Plea.

Filed August 13, 1902.

In the Justice of the Peace Court of the District of Columbia, Sub-
district Number Eight.

BAXTER MORTON, Plaintiff,	}	At Law. No. 541.
<i>vs.</i>		
EDWARD W. ANDERSON and ORLAN CLYDE		
Cullen, Defendants.		

And now comes Edward W. Anderson, one of the defendants in the above-entitled cause, and pleads to the jurisdiction of this honorable court, that he is a resident of the District of *the* Columbia, to wit: number 1435 Chapin street northwest in said District, which is not within subdistrict number eight, and prays therefore judgment if this honorable court will take further cognizance of this plea aforesaid.

EDWARD W. ANDERSON.

Sworn and subscribed before me this 22d day of July, 1902.

[SEAL.]

N. CURTIS LAMMOND,
Notary Public.

10

Proceedings Before Justice of Peace.

Filed August 13, 1902.

Return to a Writ of Certiorari.

Subdistrict No. 8.

DISTRICT OF COLUMBIA, *To wit*:

In Justice's Court, Before Robert H. Terrell, the Justice of the Peace in and for the District Aforesaid.

BAXTER MORTON, Plaintiff,	}	At Law. No. 541.
vs.		
EDWARD W. ANDERSON ET AL., Defendant.		

Action for debt.

For \$250.00 with interest at the rate of 6% per annum from July 6, 1900.

Date.	Proceedings.
July 16, 1902.	Suit filed with affidavit and summons issued.
" " "	Summons returned summoned as directed as to Anderson.
" 21, "	Continuance granted defendant to July 31, 1902. Defendant Cullen appears.
" 22, "	Plea to the jurisdiction filed
" 31, "	Second continuance granted defendants on affidavit supporting motion to Aug. 7, 1902.
Aug. 7, "	Affidavits of defense filed
" " "	Motions to quash writ on plea filed July 22, 1902, overruled.
" " "	Issue joined and trial.
" " "	Judgment in favor of plaintiff for \$250.00 current money, debt with interest at the rate of six per cent. per annum from July 6, 1900, until paid, and \$2.75 costs of suit.

when I received the annexed writ of certiorari, whereby the proceedings before me in said suit were stopped.

ROBERT H. TERRELL, J. P. [SEAL.]

11 I, Robert H. Terrell, the justice of the peace in and for the said subdistrict, by virtue of the annexed writ to me delivered, do hereby certify the record and proceedings in the suit in the writ mentioned unto the supreme court of the District of Columbia, together with all things touching the same, as fully and wholly as the same is now depending before me.

Given under my hand and seal this 12th day of August, A. D. 1902.

ROBERT H. TERRELL, *J. P.* [SEAL.]

Cost paid by plaintiff \$2.75.
Cost paid by defendant 1.00.

Memorandum.

November 4, 1902.—Appeal bond filed.

12 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 11, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 45,572, at law, wherein Baxter Morton is plaintiff, and Edward W. Anderson *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District, this
Columbia. 16 day of December, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1267. Edward W. Anderson *et al.*, appellants, *vs.* Baxter Morton. Court of Appeals, District of Columbia. Filed Dec. 18, 1902. Robert Willett, clerk.